

## §217.3

## 12 CFR Ch. II (1–15 Edition)

*Wrong-way risk* means the risk that arises when an exposure to a particular counterparty is positively correlated with the probability of default of such counterparty itself.

[Reg. Q, 78 FR 62157 and 62285, Oct. 11, 2013, as amended at 79 FR 44124, July 30, 2014; 79 FR 57744, Sept. 26, 2014; 79 FR 78295, Dec. 30, 2014]

EFFECTIVE DATE NOTE: At 79 FR 24540, May 1, 2014, §217.2 was amended by adding a definition of “covered BHC” in alphabetical order, effective Jan. 1, 2018. For the convenience of the user, the added text is set forth as follows:

### §217.2 Definitions.

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*Covered BHC* means a U.S. top-tier bank holding company that has more than \$700 billion in total assets as reported on the company’s most recent Consolidated Financial Statements for Holding Companies (FR Y-9C) or more than \$10 trillion in assets under custody as reported on the company’s most recent Banking Organization Systemic Risk Report (FR Y-15).

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### §217.3 Operational requirements for counterparty credit risk.

For purposes of calculating risk-weighted assets under subparts D and E of this part:

(a) *Cleared transaction*. In order to recognize certain exposures as cleared transactions pursuant to paragraphs (1)(ii), (iii) or (iv) of the definition of “cleared transaction” in §217.2, the exposures must meet the applicable requirements set forth in this paragraph (a).

(1) The offsetting transaction must be identified by the CCP as a transaction for the clearing member client.

(2) The collateral supporting the transaction must be held in a manner that prevents the Board-regulated institution from facing any loss due to an event of default, including from a liquidation, receivership, insolvency, or similar proceeding of either the clearing member or the clearing member’s other clients. Omnibus accounts established under 17 CFR parts 190 and 300 satisfy the requirements of this paragraph (a).

(3) The Board-regulated institution must conduct sufficient legal review to

conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from a default or receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the arrangements of paragraph (a)(2) of this section to be legal, valid, binding and enforceable under the law of the relevant jurisdictions.

(4) The offsetting transaction with a clearing member must be transferable under the transaction documents and applicable laws in the relevant jurisdiction(s) to another clearing member should the clearing member default, become insolvent, or enter receivership, insolvency, liquidation, or similar proceedings.

(b) *Eligible margin loan*. In order to recognize an exposure as an eligible margin loan as defined in §217.2, a Board-regulated institution must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (1)(iii) of the definition of eligible margin loan in §217.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(c) *Qualifying cross-product master netting agreement*. In order to recognize an agreement as a qualifying cross-product master netting agreement as defined in §217.101, a Board-regulated institution must obtain a written legal opinion verifying the validity and enforceability of the agreement under applicable law of the relevant jurisdictions if the counterparty fails to perform upon an event of default, including upon receivership, insolvency, liquidation, or similar proceeding.

(d) *Qualifying master netting agreement*. In order to recognize an agreement as a qualifying master netting agreement as defined in §217.2, a Board-regulated institution must:

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

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(i) The agreement meets the requirements of paragraph (2) of the definition of qualifying master netting agreement in §217.2; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement in §217.2.

(e) *Repo-style transaction.* In order to recognize an exposure as a repo-style transaction as defined in §217.2, a Board-regulated institution must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (3) of the definition of repo-style transaction in §217.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(f) *Failure of a QCCP to satisfy the rule's requirements.* If a Board-regulated institution determines that a CCP ceases to be a QCCP due to the failure of the CCP to satisfy one or more of the requirements set forth in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP in §217.2, the Board-regulated institution may continue to treat the CCP as a QCCP for up to three months following the determination. If the CCP fails to remedy the relevant deficiency within three months after the initial determination, or the CCP fails to satisfy the requirements set forth in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP continuously for a three-month period after remedying the relevant deficiency, a Board-regulated institution may not treat the CCP as a QCCP for the purposes of this part until after the Board-regulated institution has determined that the CCP has satisfied the

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requirements in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP for three continuous months.

§§217.4–217.9 [Reserved]

### Subpart B—Capital Ratio Requirements and Buffers

#### §217.10 Minimum capital requirements.

(a) *Minimum capital requirements.* A Board-regulated institution must maintain the following minimum capital ratios:

(1) A common equity tier 1 capital ratio of 4.5 percent.

(2) A tier 1 capital ratio of 6 percent.

(3) A total capital ratio of 8 percent.

(4) A leverage ratio of 4 percent.

(5) For advanced approaches Board-regulated institutions, a supplementary leverage ratio of 3 percent.

(b) *Standardized capital ratio calculations.* Other than as provided in paragraph (c) of this section:

(1) *Common equity tier 1 capital ratio.* A Board-regulated institution's common equity tier 1 capital ratio is the ratio of the Board-regulated institution's common equity tier 1 capital to standardized total risk-weighted assets;

(2) *Tier 1 capital ratio.* A Board-regulated institution's tier 1 capital ratio is the ratio of the Board-regulated institution's tier 1 capital to standardized total risk-weighted assets;

(3) *Total capital ratio.* A Board-regulated institution's total capital ratio is the ratio of the Board-regulated institution's total capital to standardized total risk-weighted assets; and

(4) *Leverage ratio.* A Board-regulated institution's leverage ratio is the ratio of the Board-regulated institution's tier 1 capital to the Board-regulated institution's average total consolidated assets as reported on the Board-regulated institution's Call Report, for a state member bank, or the Consolidated Financial Statements for Bank Holding Companies (FR Y-9C), for a bank holding company or savings and loan holding company, as applicable minus amounts deducted from tier 1 capital under §217.22(a), (c) and (d).

(c) *Advanced approaches capital ratio calculations.* An advanced approaches Board-regulated institution that has